

PROTECTION OF TRADEMARKS IN CHINA

Exchange of notes at Peking October 3, 1905; related note of January 22, 1906

Entered into force October 3, 1905

*Became obsolete May 20, 1943*¹

Treaty Series 478

The American Minister to the French Minister

AMERICAN LEGATION
PEKING, CHINA, *October 3, 1905*

MR. MINISTER AND DEAR COLLEAGUE:

The Government of the United States being desirous of reaching an understanding with the Government of the French Republic for the reciprocal protection against infringement in China by citizens of our respective nations of trade marks duly registered in the United States and France, I am authorized, by the Secretary of State of the United States, to inform you that effectual provision exists in American Consular Courts in China for the trial and punishment² of all persons subject to the jurisdiction of the United States who may be charged with and found guilty of infringing in any way trade marks of persons subject to the jurisdiction of France which have been duly registered in the United States.

I beg that you will kindly inform me whether American citizens are entitled to the same legal remedies in the Consular Courts of France in China as regards the protection from infringement of their trade marks duly registered in France.

I have the honor to be, My dear Colleague, Your obedient servant,

W. W. ROCKHILL

His Excellency Monsieur DUBAIL,
etc., etc., etc.

¹ Date on which the United States relinquished extraterritorial rights in China, pursuant to treaty of Jan. 11, 1943 (TS 984, *ante*, vol. 6, p. 739, CHINA).

² See related note, p. 865.

The French Minister to the American Minister

[TRANSLATION]

LEGATION OF THE
FRENCH REPUBLIC IN CHINA
Peking, October 3, 1905

MR. MINISTER AND DEAR COLLEAGUE:

By your despatch of this day Your Excellency has been pleased to inform me that the Government of the United States of America being desirous of reaching an understanding with the Government of the Republic for the reciprocal protection of trade marks, you have been authorized to state to me that the American Consular Courts in China are competent in all matters relating to the counterfeiting of trade marks by persons under the jurisdiction of the United States.

Any complaint made by a person under French jurisdiction to an American Consular Court for the purpose of securing against persons under American jurisdiction protection for a trade mark duly registered in the United States of America will be heard by said courts in first instance and on appeal by the competent courts.

I have the honor to confirm to Your Excellency this declaration which responds to the request I had made you.

So as to perfect the understanding thus arrived at by both countries I am authorized to state on my side to Your Excellency that the Government of the Republic will willingly insure in China protection for duly registered American trade marks which may be counterfeited by persons under French jurisdiction.

To that end French Consular Courts in China, for complaints in first instance, and the Court of Saigon, for appeals, will be competent to hear all such cases presented by persons under American jurisdiction.

Please accept, Mr. Minister and dear Colleague, the assurance of my highest consideration.

G. DUBAIL

*The American Minister to the French Minister**PEKING, January 22, 1906*

MR. MINISTER AND DEAR COLLEAGUE:

In connection with the notes which I had the honor to exchange with Your Excellency on October 3, 1905, looking to the reciprocal protection from infringement by our respective nationals in China of trade marks belonging to them I duly transmitted copies of the same to my Government.

In reply the Secretary of State has called to my attention, as possibly misleading, the use made in my note to you of the word "punishment" by our

Consular Courts in China of American citizens who may have infringed in China trade marks the property of persons under the jurisdiction of France.

In view of the fact that there is no statute in the United States making the infringement, counterfeiting, etc. of a trade mark a criminal offense, and that effectual provision exists by a civil action for damages by the owner of a trade mark, my Government is of the opinion that the word "punishment" should be understood to refer to a civil action only, and not to a criminal procedure, as might be inferred from the use of the word in question without the present explanation added thereto.

I beg leave to call Your Excellency's attention to the above provision of our law, so that nothing in my note of October 3, last, may be construed as conflicting therewith.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

W. W. ROCKHILL

To His Excellency M. DUBAIL,
etc., etc., etc.